EXHIBIT I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

FINALROD IP, LLC, ET AL	) Docket No. MO 15-CA-097 ADA
	)
vs.	) Midland, Texas
	)
JOHN CRANE, INC., ET AL	) February 21, 2020

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ALAN D. ALBRIGHT

APPEARANCES:

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Court Reporter:	Ms. Lily Iva Reznik, CRR, RMR 501 West 5th Street, Suite 4153 Austin, Texas 78701 (512)391-8792

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09:13:26

09:22:34 1 for -- and let me explain to you the way I see a Daubert
09:22:37 2 is.
09:22:40 3 If he were to have used a method -- this was, I
09:22:44 4 guess, for the plaintiffs now. If he had used a method
09:22:47 5 that you are arguing was incorrect, I think that's fodder
09:22:51 6 for a method of establishing whether or not they were
09:22:56 7 similar. That's something I think you can do on
09:22:58 8 cross-examination.
09:23:00 9 Whether or not he should have done that or not,
09:23:04 10 in other words, whether or not he should have gone to a
09:23:07 11 technical expert and have the technical expert provide
09:23:09 12 that opinion, that's the gating factor that I think I'm
09:23:12 13 supposed to play; and if he fails to do that, then I think
09:23:16 14 that's when I decide that the opinion is not reliable.
09:23:20 15 Do you agree with that?
09:23:21 16 MR. CAIXEIRO: I think that's right. And I think
09:23:23 17 here, we're in that latter category because what we have
09:23:26 18 here is just a -- an utter failure to use the right
09:23:34 19 hypothetical negotiation date. And then, if you're going
09:23:36 20 to try to tie it back to that 2015 date, you have to
09:23:40 21 methodologically, you have to at least show through
09:23:44 22 technical and then, I think, from a damages perspective,
09:23:47 23 economic expert testimony that there's no material
09:23:50 24 difference between the two products, and that's just not
09:23:53 25 in the record.

09:26:31 1 the end fitting; rather, he says that the end fitting
09:26:34 2 contributes to 100 percent of the value.
09:26:37 3 Now, notably, Mr. Reading doesn't have a
09:26:43 4 technical basis to draw that kind of conclusion.
09:26:45 5 THE COURT: Let me ask you this. Did -- I get
09:26:48 6 what he said and I have some pretty serious issues with
09:26:52 7 that. But I didn't see where -- and, of course,
09:26:56 8 everything I'm asking you, I'm hoping to foreshadow for
09:27:00 9 the plaintiff to fill me in.
09:27:01 10 But I didn't see where he had -- where the
09:27:06 11 plaintiffs had had the technical expert do the hard work
09:27:09 12 which I think is required, which is the technical expert
09:27:12 13 says all of this stuff is -- in other words, it's not up
09:27:19 14 to the defendant -- it's not up to the damage person to
09:27:22 15 say that we don't need to apportion because this is all --
09:27:27 16 all adds to the value. That's, in my opinion, up to the
09:27:30 17 technical person to explain the value of the patented
09:27:35 18 feature with respect to the other features with respect to
09:27:38 19 the overall product.
09:27:40 20 And then, the damages expert takes from what the
09:27:43 21 technical expert said and says, based on that, I'm able to
09:27:48 22 do this with respect to apportionment. And I didn't see
09:27:51 23 anywhere where the plaintiff had their technical expert
09:27:55 24 provide that information either.
09:27:57 25 Did I miss that?

09:27:58 MR. CAIXEIRO: No, your Honor.

09:27:59 And I largely agree with that. The one thing I would say is, there could be circumstances where there's some sort of economic -- there's some sort of marketing feature, or sales feature, or something maybe that wouldn't fall into the technical aspect. So we're talking hypothetically here, I could imagine a hypothetical situation where an economic expert might also say, well, I have more to say about that besides what the technical expert says, but certainly you need the technical expert at the baseline, and that's nonexistent in this record.

09:28:27 And what I think this case falls into -- we highlighted this in our brief, but I think this is squarely on point with the Federal Circuit's decision in Finjan from 2018, which really holds that when you have a whole product and a subcomponent, here, the sucker rod -- the entire sucker rod and an end fitting, and the patent is -- contains technology reading on a portion of that subcomponent, you then have to apportion between the patented technology and the rest of the technology and the subcomponent.

09:29:00 And the final point I'll make here is, there's no dispute there's a lot of other technology in the end-fitting subcomponent. This patent at issue doesn't cover end fittings, doesn't cover wedge end fittings,

09:29:10 doesn't cover metal end fittings, doesn't cover epoxy,
09:29:14 doesn't cover the raw materials. It's just a particular
09:29:17 -- formation of the end fitting where the compressive
09:29:20 forces are greatest as the closed end. That's a limited
09:29:25 amount of the technology within the end fitting. And by
09:29:28 failing to take that into account at all, Mr. Reading has
09:29:31 failed to carry out his apportionment obligation.
09:29:33 THE COURT: I had a damages expert argue that if
09:29:37 you -- their patent covered the -- basically the hub that
09:29:42 you used for the internet, and he argued with a straight
09:29:45 face that if that were on an airplane, you could use the
09:29:49 airplane as the basis of the value for the royalties, that
09:29:57 that didn't go over very well.
09:29:58 MR. CAIXEIRO: It doesn't. And I think the
09:30:00 Federal Circuit in recent years with the Finjan decision,
09:30:02 you look at the Power Integrations decision, I think that
09:30:05 the clear thrust of where the Federal Circuit is going on
09:30:08 this is that you can't make that kind of argument. You
09:30:10 have to finish this apportionment.
09:30:13 Actually, final point, because this is the one
09:30:16 thing that plaintiffs tried to argue to get around this.
09:30:18 They tried to portray this as an entire market value rule
09:30:22 case. Suffice it to say, this is not an entire market
09:30:25 value rule case.
09:30:25 THE COURT: I'm pretty familiar with that, too.

09:30:28 MR. CAIXEIRO: Yeah. And last thing. One reason
09:30:30 it's not is, this expert never even mentioned entire
09:30:33 market value rule, so let's --
09:30:34 THE COURT: Oh, really.
09:30:35 MR. CAIXEIRO: We could stop there. That's
09:30:36 attorney argument --
09:30:36 THE COURT: I didn't realize -- I did see the
09:30:38 argument that they made about that and I didn't find
09:30:40 overly persuasive, but I didn't realize that there's
09:30:43 nothing in the damage expert report about.
09:30:46 MR. CAIXEIRO: No. Not at all.
09:30:47 THE COURT: Okay. Well, then, let me pivot off
09:30:49 that before I hear from the plaintiffs just to give you a
09:30:51 heads up on how I see things when we go to trial, which is
09:30:57 that if an expert wants to talk about something that's not
09:31:04 mentioned in the expert report, that that is a pretty good
09:31:08 basis for an objection that will be sustained. And so,
09:31:15 that would be reason enough to preclude that argument.
09:31:19 MR. CAIXEIRO: Thank you, your Honor.
09:31:22 THE COURT: Counsel.
09:31:31 MR. LODHOLZ: Thank you, your Honor. David
09:31:33 Lodholz for the plaintiff.
09:31:35 I will start with the negotiation date issue
09:31:39 since that's what Mr. Caixeiro covered first.
09:31:43 So we agree that the proper negotiation date,

09:31:46 1 whether you use the proper date or not is a legal issue.
09:31:51 2 The issue of what is the proper negotiation date, based on
09:31:55 3 the cases that we've cited, the Smith & Nephew and the
09:31:58 4 Arlington Industries case, is clearly a factual issue,
09:32:03 5 which there's clearly sufficient evidence in this case
09:32:06 6 that the date in 2015 is a sufficient negotiation date.
09:32:13 7 And what Mr. Reading talks about in his opinion
09:32:16 8 and in his deposition testimony is that, you know, he
09:32:20 9 considered it from a business licensing standpoint, what
09:32:25 10 the entities are trying to do at the negotiation time is
09:32:30 11 look for a royalty rate that they can apply going forward
09:32:34 12 to not only the currently infringing product but any
09:32:39 13 future infringing products. And that's exactly what the
09:32:41 14 Series 300 is is a future infringing product.
09:32:46 15 And there was an issue discussed about the
09:32:48 16 entities being different, and I want to briefly address
09:32:51 17 that because, as the Court is well aware from the history
09:32:53 18 in this case, the way that worked was John Crane
09:32:57 19 Production Solutions sold all of its assets to Endurance,
09:33:01 20 and if there was a hypothetical negotiation and a
09:33:03 21 hypothetical license in 2015, then that would have been an
09:33:09 22 asset that would have been sold to Endurance, which would
09:33:10 23 have covered any infringement of the Superod patents.
09:33:15 24 So, I mean, a license, as the Court knows, is
09:33:19 25 just an agreement not to sue somebody for infringement.

09:33:21 1 So whether it's a Series 200 or a Series 300 is
09:33:25 2 irrelevant.
09:33:25 3 THE COURT: I don't mean to be disrespectful, but
09:33:27 4 what you just said goes against everything I possibly
09:33:32 5 understand about how damages works.
09:33:40 6 If Apple is infringing with a phone, you go with
09:33:48 7 the hypothetical negotiation date from the infringement of
09:33:50 8 that phone. You don't -- if they come out with a new
09:33:58 9 phone, four years from now, that also might infringe, you
09:34:05 10 don't go back to the date of the infringement of the first
09:34:10 11 phone that infringed. They may never come out with
09:34:13 12 another phone.
09:34:17 13 I don't -- I can't imagine a situation where that
09:34:23 14 would be the way the law would work.
09:34:26 15 MR. LODHOLZ: And, Judge, that's one of the
09:34:28 16 reasons why we found these estoppel cases. And we do
09:34:31 17 realize that it's a different situation.
09:34:32 18 THE COURT: There's no estoppel here. I'm saying
09:34:36 19 you have a product that comes out on X date, and then,
09:34:38 20 another product comes out on Y date. The hypothetical
09:34:42 21 negotiation for the second product is when that product --
09:34:47 22 when the party begins infringing with that product.
09:34:51 23 Because things change. That's the whole point of
09:34:56 24 hypothetical negotiation.
09:34:56 25 I can't imagine your -- I can't imagine I would

09:35:02 allow in the flip side -- what you're really trying to
09:35:08 have Mr. Reading say here is that I can assume that at the
09:35:14 hypothetical negotiation in 2015, they would have
09:35:20 negotiated a reasonable royalty rate that would apply if
09:35:23 another product was released in 2018. I know it's a
09:35:28 hypothetical negotiation, but the hypothetical part is
09:35:31 that it didn't really happen. The parties didn't sit down
09:35:34 and do it.
09:35:34 But to the extent there's any science or
09:35:41 reliability involved in how we structure damages, it is
09:35:45 that you start from the point of where the parties were at
09:35:49 when the -- because the theory is that if you asked for
09:35:56 more money than they wanted to pay -- if you said no, I'll
09:35:59 only take a 10 percent royalty rate, they'd say, well,
09:36:03 then, we're not going to release the -- we can't make a
09:36:05 profit. We're not going to release that.
09:36:08 That -- I mean, I know it's a hypothetical
09:36:11 negotiation, but that's the constrict of it is that, in
09:36:16 this case, you'd say it was at five percent. And why is
09:36:18 it five percent? Because in -- for the 200, in 2015, we
09:36:26 would have been willing to pay, they would have been
09:36:31 willing to accept this. That everything is different in
09:36:33 2018. I don't -- I can't even follow your argument.
09:36:40 MR. LODHOLZ: So I want to address two points, if
09:36:42 I can, from what you just said.

09:36:43 First, that everything is different point. So
09:36:45 when their own expert, Mr. Schottelkotte, did the same
09:36:49 analysis in his rebuttal report as between 2015 and 2018,
09:36:55 he said, I've looked at all of this already in 2015 and
09:36:58 I'm looking at it again in 2018 -- and this is on page 5
09:37:01 and 6 of his rebuttal report. That's, I think, Exhibit 4
09:37:05 to our response. And he says, it's all the same, I'm
09:37:08 using the same number. So that's --
09:37:11 THE COURT: And I think an expert can do that. I
09:37:14 think an expert can say, prospectively, I am looking at
09:37:18 this, I'm looking at that, and I'm going to determine
09:37:22 having looked at everything that this is the result of it.
09:37:26 I don't find it possible that you could say, I used the
09:37:30 wrong date, which is 2015, but it's okay, it would apply
09:37:38 in 2018, anyway, which is what you all are saying.
09:37:41 MR. LODHOLZ: And to that specific point, I want
09:37:44 to discuss the Enplas Display case, which is one of the
09:37:49 cases that John Crane relies on. So one of the
09:37:53 differences in that case, there was actually two patents
09:37:57 at issue, and the expert for the plaintiff gave an opinion
09:38:03 on one of the patents that if you look at it from the
09:38:06 standpoint of -- and in that case, there's a pretty
09:38:11 significant distinction that they were looking at a
09:38:13 lump-sum payment, as opposed to, in this case, we have a
09:38:19 payout over time. So there's a reasonable royalty rate

09:38:22 and then, a separate base. And in that case, they were
09:38:24 applying to the rate to the base at the same time and
09:38:26 getting the jury to come up with one number.
09:38:30 But in that case, there was two separate patents,
09:38:33 both of which resulted in jury findings of basically a
09:38:38 freedom to operate license, which is the same kind of
09:38:41 license that Mr. Reading is advocating for in his opinion.
09:38:46 And only one of the freedom to operate licenses got
09:38:50 overturned; and that was because it was looking at --
09:38:54 looking into the past and speculating that products that
09:39:00 were being sold that were not even alleged to infringe,
09:39:04 that those products were included in the lump-sum two to
09:39:08 $4 million number and the jury ultimately came back at
09:39:12 four. And so, it's --
09:39:12 THE COURT: Let me ask you this. Why did Mr.
09:39:15 Reading use the 2015 date?
09:39:16 MR. LODHOLZ: Well, I think I could answer that
09:39:18 from a practical -- from just a factual perspective. When
09:39:22 he wrote this original opinion and provided it, he was
09:39:26 going to be the expert for the Series 200 and the Series
09:39:30 300. Then there was a later ruling from the Court that he
09:39:34 could not opine about the Series 200.
09:39:36 THE COURT: Okay.
09:39:38 MR. LODHOLZ: So from a practical standpoint,
09:39:40 that's why he did it that way.

09:39:42 THE COURT: Why didn't he use the correct date?

09:39:44 MR. LODHOLZ: Well, and that's in his deposition, he explains that. He looked at it from the standpoint of a freedom to operate license, which in the dissenting opinion in Enplas, the judge points out that there's no authority that says a freedom to operate-type license is somehow rejected by the Court, and explains that businesses in a hypothetical negotiation situation -- if I can go back to my table, I can pull it.

09:40:21 So this is the Enplas case, Judge, and the dissenting opinion.

09:40:26 THE COURT: Let me see if I understand that scenario of what happened was, he uses the 2015 date. The Court makes its ruling, and then, did he consciously decide he was not going to amend his report and use the 2018 date and say, I don't need to because I'm going to stick with the 2015 date because it's a freedom to operate license?

09:40:56 MR. LODHOLZ: Yes.

09:40:56 THE COURT: Okay.

09:40:58 MR. LODHOLZ: And what the dissenting opinion says, Judge, is a license is intended to alleviate business uncertainty. No precedent limits the hypothetical negotiation to consideration of a single product. And then, skipping forward just a couple of

09:41:13 words, says the cost and disruption of separate litigation
09:41:17 over every existing and future product within the possible
09:41:19 scope of the patent is a reasonable consideration in
09:41:24 license negotiations, and citing to Rude vs. Westcott out
09:41:28 of the Supreme Court. And that's on page 417 of the
09:41:35 opinion in the dissenting section. So --
09:41:38 THE COURT: I'm going to tell you that I think as
09:41:43 a matter of law that that is an incorrect way -- I think
09:41:46 that methodology as a matter of law is incorrect. I could
09:41:52 be wrong, but I don't think that's a subject of
09:41:56 cross-examination or a fact issue. I think that
09:41:59 methodology is incorrect.
09:42:03 Why don't you take up the issue of method he did
09:42:08 for apportionment?
09:42:09 MR. LODHOLZ: Sure. So the apportionment issue,
09:42:17 Judge, is clearly a cross-examination issue. They just
09:42:20 disagree with the number he applied to it. In his
09:42:24 deposition, he explains that he reviewed every single
09:42:27 aspect of what they say he didn't. He just said that it's
09:42:31 not worth anything. And what he -- I think there was an
09:42:34 issue in the initial argument about the technical stuff
09:42:39 that he looked at. He looked at -- he says he looked at
09:42:42 all the technical --
09:42:43 THE COURT: Tell me where -- tell me what your
09:42:47 technical expert did to provide him the information that

09:42:50 1 he relied on for apportionment.
09:42:52 2 MR. LODHOLZ: I don't know specifically what our
09:42:54 3 technical expert did, but I know he relied on Mr.
09:42:58 4 Beckwith's technical explanation, at least as to the 70
09:43:02 5 percent. And then, he said he looked at the rest of what
09:43:04 6 he talked about as to the 80 percent of the end fitting
09:43:07 7 and said that didn't make sense to him because there was
09:43:11 8 clearly no value from those additional things. And he was
09:43:16 9 -- I mean, he was saying that based on what the other
09:43:18 10 expert said.
09:43:18 11 So it's not an issue of he didn't consider it.
09:43:22 12 It's an issue of he did consider it, and they just
09:43:24 13 disagree with his evaluation.
09:43:25 14 THE COURT: But I thought -- what I'd like to
09:43:27 15 know is, what specific information the technical expert or
09:43:34 16 a fact witness who's in the industry, or whatever, what
09:43:38 17 they specific -- what you were going to specifically rely
09:43:41 18 upon -- let me back up.
09:43:44 19 I want to know where in Mr. Reading's report he
09:43:49 20 cites what he relied on with respect -- what he relied on
09:43:55 21 to provide his testimony with respect to apportionment.
09:44:00 22 Do you have Mr. Reading's damages report?
09:44:03 23 MR. LODHOLZ: I have written down here that it's
09:44:08 24 in paragraph 63 through 65 of his report.
09:44:11 25 THE COURT: If you have that, I'll take a look at

09:44:13 it. Or we could put it up on the screen. However you
09:44:26 want to do it, I'm happy to take a look at it.
09:44:29 MR. LODHOLZ: He also further elaborates on that
09:44:31 in his deposition. And that's actually the section on
09:44:47 ancillary convoyed sales, I think. But, I mean, that's
09:44:58 another point that we make. Oh, I'm sorry.
09:45:13 THE COURT: Why don't you just hand it to me. If
09:45:15 you'll hand it to Katherine. I'm looking at page 17 of 31
09:45:27 of Mr. Reading's expert -- and this is his only report?
09:45:34 MR. LODHOLZ: He did a supplement?
09:45:35 THE COURT: Let me ask you this. Is this the
09:45:36 only -- are paragraphs 63 through 65 the only parts of his
09:45:41 report where he discusses apportionment and his basis for
09:45:45 it?
09:45:46 MR. LODHOLZ: No. And, actually, I was saying,
09:45:47 after looking at that and my notes again, that's actually
09:45:49 like the convoyed sales section.
09:45:51 THE COURT: Okay. I need whatever section --
09:45:54 here, Katherine. I need whatever section of the expert
09:45:57 report he has where -- I want to see where he discloses in
09:46:00 his expert report what he relied on to be able to testify
09:46:05 about with respect to apportionment.
09:46:08 MR. LODHOLZ: So that would be in page 24 and 25
09:46:12 of his report.
09:46:13 THE COURT: If you'll hand that to Katherine,

09:46:15 1 that will be great. So I'm looking at pages 24 and 25 of
09:46:43 2 Mr. Reading's expert report, under factor 13, correct?
09:46:47 3 MR. LODHOLZ: Yes.
09:46:48 4 THE COURT: Okay. I find paragraph 100 is
09:46:56 5 essentially just a statement of what the law is. The
09:47:07 6 summary of 101 says that it is clear from the evidence in
09:47:11 7 this case that a critical component of the performance of
09:47:14 8 those sucker rods is the connection of the end fitting to
09:47:17 9 the fiberglass rod. I don't find that adequate.
09:47:22 10 Paragraph 102 says, sucker rods are comprised of
09:47:26 11 three main components: The fiberglass rod body, end
09:47:30 12 fittings and epoxy. It is my understanding that the
09:47:33 13 claims of the patents in suit in this matter relate to the
09:47:35 14 design of the end fittings. That doesn't contribute
09:47:37 15 anything.
09:47:39 16 Paragraph 103, I do recognize that there are
09:47:42 17 other elements of the fiberglass sucker rod that are not
09:47:46 18 covered by the patents in suit. According to Mr.
09:47:49 19 Rutledge, manufacturing processes, raw materials and
09:47:52 20 processes all contribute to successful product. And
09:47:57 21 there's a citation to Mr. Rutledge's deposition. I find
09:48:04 22 that that is inadequate.
09:48:06 23 Paragraph 104, it is my understanding that John
09:48:11 24 Crane's technical expert, Dr. Scott Beckworth -- Beckwith
09:48:15 25 stated in this report, I have considered how much of the

09:48:19 overall sucker rod's value to a customer is attributable
09:48:22 to the end fitting as explained below. In my opinion,
09:48:26 approximately 70 percent of the overall value of a sucker
09:48:28 rod is attributable to the end fitting. And approximately
09:48:32 30 percent is attributable to the fiberglass body, epoxy
09:48:36 and manufacturing and assembly process, and it cites to
09:48:41 his declaration.
09:48:44 And that is the sum total of what you have
09:48:47 submitted with respect to Mr. Reading's analysis or
09:48:55 reliance on his -- of what Mr. -- of Dr. -- is it Dr.
09:49:02 Beckwith? Dr. Scott Beckwith said. I don't,
09:49:16 unfortunately -- I don't have the "as explained below in
09:49:20 my opinions." So I don't know what Dr. Beckwith said
09:49:24 there.
09:49:26 Do you happen to have Dr. Beckwith's report?
09:49:29 MR. LODHOLZ: His report?
09:49:30 THE COURT: Yes, sir.
09:49:31 MR. LODHOLZ: I have it in a separate binder.
09:49:33 THE COURT: If you could get that for me. I'd
09:49:35 like to see -- it doesn't -- I'd like to see page 138 of
09:49:46 Dr. Beckwith's report.
09:50:02 MR. LODHOLZ: Page 138, Judge?
09:50:04 THE COURT: That's what it says in the footnote.
09:50:06 I mean, you can double check my -- I'm not the greatest at
09:50:09 this. I had someone help me when I was a lawyer.

09:50:12 Yes, sir.

09:50:14 MR. CAIXEIRO: I just want to make one point for clarity. Dr. Beckwith is our expert.

09:50:18 THE COURT: Oh, okay. And so, let me hear from you real quick. Is there anything in what Dr. Beckwith says that provides Mr. Reading with what he's looking for?

09:50:20 09:50:21 09:50:25

09:50:31 MR. CAIXEIRO: Well, I'll defer to Ms. Ainsworth to -- on part of that answer, but here's the important thing. Dr. Beckwith -- they're leaving out a sentence that Dr. Beckwith said, which is that within the end fitting, 80 percent of the value of the end fitting is attributable to the patent. So Dr. Beckwith did a whole other step of apportionment that's being be excluded by Mr. Reading in this paragraph. So.

09:50:34 09:50:38 09:50:41 09:50:43 09:50:46 09:50:50 09:50:53

09:50:55 THE COURT: Okay. And is that -- do you have anything else from the plaintiff you want to submit with respect to the apportionment that Mr. Reading did?

09:50:59 09:51:01

09:51:05 MR. LODHOLZ: I do want to touch a couple of more points, if I can very briefly.

09:51:07

09:51:09 THE COURT: Sure. You can have as much time as you want.

09:51:11

09:51:20 MR. LODHOLZ: So the cases that Mr. Caixeiro was talking about, the Power Integrations, the VirnetX case, again, these are all royalty-base issues. So in every expert report on damages in this case, the expert goes

09:51:28 09:51:32 09:51:37

09:51:42 1 through the Georgia Pacific factors and determines the
09:51:48 2 royalty rate applicable, and then, every single expert
09:51:51 3 goes through the royalty base based on the sale of the
09:51:54 4 entire rod.
09:51:56 5 So these rulings on apportionment have to do with
09:52:01 6 the royalty base. And there's no disagreement amongst the
09:52:05 7 experts in this case that the royalty base should be based
09:52:07 8 on -- because you can't sell an end fitting -- and that's
09:52:11 9 what Mr. Reading explains in his deposition testimony that
09:52:15 10 we've cited. You can't sell a sucker rod by itself. It
09:52:18 11 has to have an end fitting. You can't sell the internal
09:52:20 12 wedge of an end fitting by itself; it has to be the entire
09:52:23 13 end fitting with the rod.
09:52:24 14 And there's a paper in this case written by the
09:52:26 15 defendants called, It's All About The End Fitting.
09:52:30 16 There's a second paper called, It's All About The End
09:52:34 17 Fitting II. I mean, clearly in this case, the value of
09:52:38 18 this patented technology is the end fitting with the
09:52:43 19 sucker rod. And there's even claims that we've asserted
09:52:45 20 that are for the entire rod with the end fitting. And
09:52:49 21 every single claim that we've asserted is for the entire
09:52:53 22 end fitting.
09:52:54 23 So the suggestion that -- you know, I think Mr.
09:52:57 24 Reading did review the different -- the sales
09:53:01 25 relationships, the manufacturing processes, and he says in

09:53:05 1 the marketplace, based on what he's seen with the numbers,
09:53:07 2 that adds no value. You know, he's looking at the
09:53:11 3 technical report from Mr. Beckwith. He's looking at the
09:53:14 4 sales difference in the numbers and saying that adds no
09:53:17 5 value. And if they want to cross-examine him on that,
09:53:21 6 they can.
09:53:21 7 THE COURT: Do you remember what was covered in
09:53:25 8 the Lucent vs. Gateway case? Do you remember what the
09:53:28 9 feature was?
09:53:28 10 MR. LODHOLZ: I do not off the top of my head,
09:53:30 11 Judge.
09:53:30 12 THE COURT: It was the feature in Outlook that
09:53:34 13 allowed you when you were picking -- going through and
09:53:38 14 trying to fill in the date, it auto-filled the date for
09:53:41 15 you. And Lucent argued that the base -- the base was the
09:53:52 16 computer that you loaded Microsoft Outlook onto to
09:53:57 17 determine that, and in that case, the circuit made very
09:53:59 18 clear that no, you apportion it down, in that case, not
09:54:04 19 even necessarily to the Microsoft Outlook, but to the
09:54:07 20 value of that feature with respect to it. They made the
09:54:12 21 same argument that you did, how important the date feature
09:54:15 22 was, how no one -- they got $500 million for that. It
09:54:21 23 didn't survive appeal. But.
09:54:25 24 MR. LODHOLZ: And, Judge, we're not seeking
09:54:27 25 profits from related services. That's -- the related

09:54:32 1 service convoyed sales part and the same way as the
09:54:37 2 apportionment is part of the reasonable royalty. But the
09:54:41 3 base rate of what's the salable unit, every expert agrees
09:54:46 4 in this case, that's the entire rod with the end fitting.
09:54:49 5 So I think what they've done is a fairly creative
09:54:52 6 way of saying, here's some case law on how do we get to
09:54:56 7 the royalty base and let's apply it to the experts'
09:55:01 8 analysis of the royalty rate and I think that's -- I think
09:55:04 9 that's an incorrect way to look at it just from a legal
09:55:08 10 perspective. And if we're talking about what the royalty
09:55:10 11 rate is, I mean, those factors -- I mean, he looked at
09:55:12 12 every factor, and the factors are subject to
09:55:15 13 cross-examination. Why didn't you -- you know, why didn't
09:55:17 14 you consider this? Why didn't you consider that, instead?
09:55:20 15 That's vigorous cross-examination can correct those issues
09:55:25 16 on the royalty rate for the apportionment.
09:55:29 17 THE COURT: Anything else? Okay.
09:55:33 18 The Court is going to grant the motion -- the
09:55:36 19 Daubert motion both respect to the use of an incorrect
09:55:43 20 hypothetical negotiation date. And the Court also
09:55:49 21 believes that the method of apportionment was not properly
09:55:52 22 done.
09:55:56 23 What does that do with respect to the plaintiffs'
09:55:58 24 claims for the Series 300? I'd assume -- does that
09:56:04 25 eliminate your damage claim on that?